Parson & Lusk, Inc. *and* Sheet Metal Workers International Association, Local Union 33, AFL–CIO. Cases 11–CA–18905–2 and 11–CA–18906

March 20, 2002

DECISION AND ORDER GRANTING MOTION FOR PARTIAL SUMMARY JUDGMENT

BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

Upon charges filed by Sheet Metal Workers Local 33 on January 16, 2001,[1] the General Counsel of the National Labor Relations Board issued a consolidated complaint on May 25, 2001, against Parson & Lusk, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charges and consolidated complaint, the Respondent failed to file a timely answer to those portions of the complaint on which the General Counsel seeks partial summary judgment.

On July 26, 2001, the General Counsel filed with the Board a Motion for Partial Summary Judgment, with supporting memorandum. On July 31, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the Motion for Partial Summary Judgment should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that, unless an answer is filed within 14 days of service, all the allegations in the complaint shall be deemed to be admitted to be true.

The undisputed allegations in the Motion for Partial Summary Judgment disclose that, on June 12, 2001,[2] the Board's regional attorney for Region 11 sent a letter, by certified mail, to the Respondent's president, Keith Parson, informing him that an answer to the complaint had been due by June 8. This letter further advised the Respondent that, if an appropriate answer was not received by the close of business on June 22, the Region would move for summary judgment.

In response, Parson sent a letter, dated June 14, to the Region stating in pertinent part that:

> Please be advised, I sent a letter to Jennifer Arrington dated May 8, 2001. This letter states our position in this matter. Attached, please see a copy of that letter along with a copy of correspondence to me from Mr. Gombos.
>
> Our position is as stated in my letter to Ms. Arrington and we are willing to and certainly want to try and do what is necessary to resolve this issue in a manner that is fair to all concerned parties.

The May 8 letter that Parson referred to is the position statement he sent to Board Agent Arrington regarding the allegations of the unfair labor practice charges that the Union filed in this case. While stating in the May 8 letter that he generally agreed with the General Counsel's proposed settlement regarding employee David Shrewsberry and that he was willing to post a Board notice on the Company's bulletin board, Parson specifically disputed the charge allegation that the Respondent had unlawfully refused to hire employee Randy Gombos. The Respondent did not dispute any other allegations in the consolidated complaint and, as stated, has not responded to the Notice to Show Cause.

As the General Counsel points out, the Respondent is acting pro se and has resubmitted its postcharge statement of position to serve as an answer to the complaint. In cases where, as here, a pro se Respondent has submitted its postcharge, precomplaint position statement as a substitute for an answer to the complaint, the Board will scrutinize the position statement to determine whether the statement contains a clear denial of the complaint allegations involving the operative facts of the alleged unfair labor practice violations.[3] We agree with the General Counsel that the only allegation this Respondent has specifically denied in its postcharge statement to the Region was its failure to hire Gambos as alleged in paragraph 10 of the consolidated complaint. Because the Respondent has failed, at any time, to deny the remaining allegations in the consolidated complaint, we grant the General Counsel's motion seeking partial summary judgment on all allegations there, except those pertaining to Gambos in paragraph 10.

On the entire record, the Board makes the following

[1] The Union later filed an amended charge in Case 11–CA–18905–2 on March 9, 2001.

[2] All dates are in 2001, unless otherwise noted.

[3] See, e.g., *Central States Xpress, Inc.*, 324 NLRB 442 (1997).

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Virginia corporation with a principal place of business located in Bluefield, West Virginia, has been engaged in the business of mechanical, plumbing, and electrical contracting. During the 12-month period preceding the issuance of the complaint, which period is representative of all times material here, the Respondent, in the course and conduct of its business operations described above, purchased and received at its Bluefield, West Virginia facility goods and materials valued in excess of $50,000 directly from points outside the State of West Virginia, as well as performed services valued in excess of $50,000 in States other than the State of West Virginia. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Sheet Metal Workers International Association, Local Union 33, AFL–CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About December 21, 2000, the Respondent discharged employee David Shrewsbury and thereafter failed and refused to reinstate him. The Respondent through its agent and president, Keith Parson, also advised Shrewsbury on that date that his discharge was due to his organizational activities on the Union's behalf. Further, about December 22, 2000, the Respondent, through Parson, threatened employees that their selection of the Union as a bargaining representative would be futile, solicited employees to withdraw their support for the Union, and threatened its employees with plant closure if they selected the Union as their bargaining representative.

CONCLUSIONS OF LAW

1. By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act, thereby violating Section 8(a)(1) of the Act. Additionally, by discharging an employee because he engaged in union activities, the Respondent has been discriminating in regard to hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization and other concerted activities in violation of Section 8(a)(3) and (1) of the Act.

2. By the conduct described above, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) of the Act by discharging employee David Shrewsbury, we shall order the Respondent to offer him full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed. We also shall order the Respondent to make Shrewsbury whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent also shall be required to remove from its files any reference to Shrewsbury's discharge, and to notify him in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Parson & Lusk, Inc., Bluefield, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Advising an employee that his discharge was due to his organizational activities on the Union's behalf.

(b) Threatening its employees that their selection of the Union as a bargaining representative would be futile.

(c) Soliciting its employees to withdraw their support for the Union.

(d) Threatening its employees with plant closure if they select the Union as their bargaining representative.

(e) Discharging or otherwise discriminating against employees because they assist the Union and engage in concerted activities in order to discourage employees from engaging in these and other concerted activities.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer David Shrewsbury full reinstatement to his former job or, if this job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make David Shrewsbury whole for any loss of earnings and other benefits suffered as a result of his

unlawful discharge, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of David Shrewsbury, and within 3 days thereafter, notify him in writing that this has been done and that his discharge will not be used against him in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place to be designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by Region 11, post at its various facilities copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 21, 2000.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 20, 2002

Wilma B. Liebman, Member

William B. Cowen, Member

Michael J. Bartlett, Member

[4] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice "Posted by Order of the National Labor Relations Board'' shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT advise you that your discharge was due to your organizational activities on the Union's behalf.

WE WILL NOT threaten you that selection of the Union as your bargaining representative would be futile.

WE WILL NOT solicit you to withdraw your support for the Union.

WE WILL NOT threaten you with plant closure if you select the Union as your bargaining representative.

WE WILL NOT discharge or otherwise discriminate against you because you assist the Union and engage in concerted activities in order to discourage you from engaging in these and other concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights guaranteed by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer David Shrewsbury full reinstatement to his former job or, this job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make David Shrewsbury whole for any loss of earnings and other benefits suffered as a result of his unlawful discharge, with interest.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharge of David Shrewsbury and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that his discharge will not be used against him in any way.

PARSON & LUSK, INC.